

SENATE BILL 597

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CF HB 620

By: **Senator Rosapepe**

Introduced and read first time: February 5, 2010

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2010

CHAPTER _____

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Common Elements and**
3 **Common Areas – Implied Warranties**

4 FOR the purpose of requiring the description of the common elements in a
5 condominium declaration that is recorded on or after a certain date to include
6 certain improvements; providing that certain provisions of this Act do not apply
7 to a condominium that is occupied and used solely for nonresidential purposes;
8 prohibiting under certain circumstances the amending of the description and
9 designation of the common elements in a condominium declaration that is
10 recorded after a certain date; altering the duration of a certain implied
11 warranty on the common elements of a condominium; altering the duration of a
12 certain implied warranty on the common areas of a homeowners association;
13 making stylistic changes; providing for the application of this Act; and generally
14 relating to implied warranties on common elements in condominiums and
15 common areas in homeowners associations.

16 BY repealing and reenacting, with amendments,
17 Article – Real Property
18 Section 11–103(a), 11–131(d), and 11B–110(a)
19 Annotated Code of Maryland
20 (2003 Replacement Volume and 2009 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1

Article – Real Property

2 11–103.

3 (a) The declaration shall express at least the following particulars:

4 (1) The name by which the condominium is to be identified, which
5 name shall include the word “condominium” or be followed by the phrase “a
6 condominium”.7 (2) A description of the condominium sufficient to identify it with
8 reasonable certainty together with a statement of the owner’s intent to subject the
9 property to the condominium regime established under this title.10 (3) A general description of each unit, including its perimeters,
11 location, and any other data sufficient to identify it with reasonable certainty. As to
12 condominiums created on or after July 1, 1981, except as provided by the declaration
13 or the plat **AND SUBJECT TO PARAGRAPH (4)(II) OF THIS SUBSECTION:**14 (i) If walls, floors, or ceilings are designated as boundaries of a
15 unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper,
16 paint, finished flooring, and any other materials constituting any part of the finished
17 surfaces thereof are a part of the unit, and all other portions of the walls, floors, or
18 ceilings are a part of the common elements.19 (ii) If any chute, flue, duct, wire, conduit, or any other fixture
20 lies partially within and partially outside the designated boundaries of a unit, any
21 portion thereof serving only that unit is a part of that unit, and any portion thereof
22 serving more than one unit or any portion of the common elements is a part of the
23 common elements.24 (iii) Subject to the provisions of subparagraph (ii) of this
25 paragraph, all spaces, interior partitions, and other fixtures and improvements within
26 the boundaries of a unit are a part of the unit.27 (iv) Any shutters, awnings, window boxes, doorsteps, stoops,
28 porches, balconies, patios, and all exterior doors and windows or other fixtures
29 designed to serve a single unit, but located outside the unit’s boundaries, are limited
30 common elements allocated exclusively to that unit.31 (4) (I) A general description of the common elements together with
32 a designation of those portions of the common elements that are limited common
33 elements and the unit to which the use of each is restricted initially.34 (II) 1. A. **THIS SUBPARAGRAPH APPLIES TO ANY**
35 **CONDOMINIUM FOR WHICH A DECLARATION, BYLAWS, AND PLAT ARE**

1 RECORDED IN THE LAND RECORDS OF THE COUNTY WHERE THE PROPERTY IS
2 LOCATED ON OR AFTER OCTOBER 1, 2010.

3 **B. THIS SUBPARAGRAPH DOES NOT APPLY TO A**
4 **CONDOMINIUM THAT IS OCCUPIED AND USED SOLELY FOR NONRESIDENTIAL**
5 **PURPOSES.**

6 **2. THE DESCRIPTION OF THE COMMON ELEMENTS**
7 **SHALL INCLUDE THE FOLLOWING IMPROVEMENTS TO THE EXTENT THAT THE**
8 **IMPROVEMENTS ARE SHARED BY OR SERVE MORE THAN ONE UNIT OR SERVE**
9 **ANY PORTION OF THE COMMON ELEMENTS:**

- 10 **A. ROOFS;**
11 **B. FOUNDATIONS;**
12 **C. EXTERNAL AND SUPPORTING WALLS;**
13 **D. MECHANICAL, ELECTRICAL, AND PLUMBING**
14 **SYSTEMS; AND**
15 **E. OTHER STRUCTURAL ELEMENTS.**

16 **3. ~~THE~~ WITH THE EXCEPTION OF CORRECTIVE**
17 **AMENDMENTS NECESSARY TO COMPLY WITH SUBSUBPARAGRAPH 2 OF THIS**
18 **SUBPARAGRAPH, THE DESCRIPTION AND DESIGNATION OF THE COMMON**
19 **ELEMENTS REQUIRED UNDER SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH**
20 **MAY NOT BE AMENDED UNTIL AFTER THE DATE ON WHICH THE DEVELOPER**
21 **TRANSFERS CONTROL OF THE COUNCIL OF UNIT OWNERS UNDER §**
22 **11-109(C)(16) OF THIS TITLE UNIT OWNERS, OTHER THAN THE DEVELOPER AND**
23 **ITS AFFILIATES, FIRST ELECT A CONTROLLING MAJORITY OF THE MEMBERS OF**
24 **THE BOARD OF DIRECTORS FOR THE COUNCIL OF UNIT OWNERS.**

25 (5) The percentage interests appurtenant to each unit as provided in §
26 11-107 of this title.

27 (6) The number of votes at meetings of the council of unit owners
28 appurtenant to each unit.

29 11-131.

30 (d) (1) In addition to the implied warranties set forth in § 10-203 of this
31 article there shall be an implied warranty on common elements from a developer to
32 the council of unit owners. The warranty shall apply to: the roof, foundation, external

1 and supporting walls, mechanical, electrical, and plumbing systems, and other
2 structural elements.

3 (2) The warranty shall provide that the developer is responsible for
4 correcting any defect in materials or workmanship, and that the specified common
5 elements are within acceptable industry standards in effect when the building was
6 constructed.

7 (3) (I) The warranty on common elements commences with the
8 first transfer of title to a unit owner.

9 (II) The warranty of any common elements not completed at
10 ~~that time~~ **THE FIRST TRANSFER OF TITLE TO A UNIT OWNER** shall commence with
11 the completion of that element or with its availability for use by all unit owners,
12 whichever occurs later.

13 (III) The warranty extends for a period of ~~3~~ **THREE** years
14 **FROM COMMENCEMENT UNDER SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH**
15 **OR TWO 2 YEARS FROM THE DATE ON WHICH THE DEVELOPER TRANSFERS**
16 **CONTROL OF THE COUNCIL OF UNIT OWNERS UNDER § 11-109(C)(16) OF THIS**
17 **TITLE UNIT OWNERS, OTHER THAN THE DEVELOPER AND ITS AFFILIATES, FIRST**
18 **ELECT A CONTROLLING MAJORITY OF THE MEMBERS OF THE BOARD OF**
19 **DIRECTORS FOR THE COUNCIL OF UNIT OWNERS, WHICHEVER OCCURS LATER.**

20 (4) A suit for enforcement of the warranty on general common
21 elements shall be brought only by the council of unit owners. A suit for enforcement of
22 the warranty on limited common elements may be brought by the council of unit
23 owners or any unit owner to whose use it is reserved.

24 11B-110.

25 (a) (1) In addition to the implied warranties on private dwelling units
26 under § 10-203 of this article and the express warranties on private dwelling units
27 under § 10-202 of this article, there shall be an implied warranty to the homeowners
28 association that the improvements to common areas are:

- 29 (i) Free from faulty materials;
- 30 (ii) Constructed in accordance with sound engineering
31 standards; and
- 32 (iii) Constructed in a workmanlike manner.

33 (2) (i) Subject to the provisions of subparagraph (ii) of this
34 paragraph, if the improvements to the common areas were constructed by the vendor,
35 its agents, servants, employees, contractors, or subcontractors, then the warranty on
36 improvements shall be from the vendor of the lots within the development.

1 (ii) If the improvements to the common areas were constructed
2 on the common areas prior to its conveyance to the homeowners association, then the
3 warranty on improvements shall be from the grantor of the common areas.

4 (3) (I) The warranty on improvements to the common areas begins
5 with the first transfer of title to a lot to a member of the public by the vendor of the lot.

6 (II) The warranty on improvements to common areas not
7 completed at ~~that time~~ THE FIRST TRANSFER OF TITLE TO A LOT shall begin with
8 the completion of the improvement or with its availability for use by lot owners,
9 whichever occurs later.

10 (III) The warranty extends for a period of [one year] ~~TWO 2~~
11 YEARS FROM COMMENCEMENT UNDER SUBPARAGRAPH (I) OR (II) OF THIS
12 PARAGRAPH OR TWO 2 YEARS FROM THE DATE ON WHICH THE DECLARANT
13 TRANSFERS CONTROL OF THE HOMEOWNERS ASSOCIATION UNDER § 11B-106.1
14 OF THIS TITLE LOT OWNERS, OTHER THAN THE DECLARANT AND ITS
15 AFFILIATES, FIRST ELECT A CONTROLLING MAJORITY OF THE MEMBERS OF THE
16 GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION, WHICHEVER OCCURS
17 LATER.

18 (4) Suit for enforcement of the warranty on improvements to the
19 common areas may be brought by either the homeowners association or by an
20 individual lot owner.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
22 construed to apply only prospectively and may not be applied or interpreted to have
23 any effect on or application to any condominium or homeowners association for which
24 a declaration, bylaws, and plat have been recorded in the land records of the county
25 where the property is located before the effective date of this Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.